that the defendant should be held responsible for the award not being delivered. But the solution at all times in fact lay in his own hands. Either party to an arbitration can take up the award on payment of the arbitrator's charges; until payment the arbitrator has a lien on the award for his fees. Hence the allegations of negligence are not only groundless but frivolous and vexatious. The plaintiff's own bundle of documents (marked "A") abundantly bears out this view.

As to the matter of the action, Civil Suit No. 334 of 1955, the plaintiff admitted that he had "agreed in the presence of the Judge to the settlement terms as recorded," but said that he was forced into it. Duress is not synonymous with negligence. Even the suggestion of duress is so far-fetched as not to merit a moment's consideration.

I accordingly dismissed the action with costs.

Action dismissed.

Solicitors:—*Braddell & Ramani.*

PUBLIC PROSECUTOR v. THUI KUAN WING

[R.Cr.J. (Hashim J.) October 17, 1963]

[Kuantan — Criminal Revision No. 4 of 1963]

Criminal Procedure—Jurisdiction—Magistrate who is also President, Sessions Court—Cannot sit on Bench in dual capacity.

Criminal Procedure—Persons convicted under the Prevention of Crime Ordinance, 1959—Binding over of—Whether proper.

A Magistrate who is also a President of the Sessions Court cannot sit on the Bench in his dual capacity. If he finds that a case should properly go before the Sessions Court he should adjourn court if he is sitting as a Magistrate and register the case as a Sessions Court case. He should then sit again as President and deal with the case in that capacity.

The Prevention of Crime Ordinance deals with the prevention of crime. From the First Schedule to the Ordinance it could be seen that the persons affected by this Ordinance are members of unlawful societies, gangsters, extortioners, traffickers in opium chandu and other dangerous drugs, traffickers in women and girls and gambling promoters. To bind over such a person who has been convicted under this Ordinance is manifestly inadequate and would defeat the purpose of the Ordinance.

CRIMINAL REVISION.

Hashim J.: This case has been referred to me by the Deputy Public Prosecutor, Pahang.

The accused was charged in the Magistrate's Court, Temerloh under section 15(2)(e) of the Prevention of Crime Ordinance No. 13 of 1959. He pleaded guilty to the charge. The learned Magistrate convicted him and bound him over in the sum of $500 with 2 sureties for a period of one year under section 294(i) Criminal Procedure Code (Cap. 6). The penalty section is section 15(4) of Ordinance No. 13 of 1959 where the maximum sentence is 5 years.

I think I have said it before but I repeat that a Magistrate who is also a President of the Sessions Court must bear in mind that he cannot sit on the Bench in his dual capacity. He is sitting either as a Magistrate or as a President. If and when he finds that a case should properly go before the Sessions Court he should adjourn Court if he is sitting as a Magistrate and register the case as a Sessions Court case. He should then sit again as President of the Sessions Court and deal with the case in that capacity.

In this case the maximum sentence that can be imposed is 5 years imprisonment. There appears to be nothing in the Ordinance which empowers a Magistrate to try offences committed under this Ordinance. It would therefore logically follow that all offences under this Ordinance should be tried in a Sessions Court.

I would like to make one further observation. This Ordinance deals with the prevention of crime and I would invite attention to the First Schedule to the Ordinance under the heading "Registrable Categories". It could be seen that the persons affected by this Ordinance are members of unlawful societies, gangsters, extortioners, traffickers in opium, chandu and other deleterious drugs, traffickers in women and girls and gambling promoters. To bind over such a person who has been convicted under this Ordinance would appear to be manifestly inadequate and would defeat the purpose of the Ordinance. I would quote section 15(4) of this Ordinance:—

"A registered person who contravenes or fails to comply with any order or restriction imposed on him under this section shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding five years and not less than two years".

I quash the conviction and sentence and order that the accused be charged in the Sessions Court with the same charge.

Order accordingly.

SENIK v. HASSAN & ANOR.

[A.C.J. (Suffian J.) October 26, 1963]

[Alor Star — Kedah Civil Appeal No. 5 of 1963]

Land Laws—State Land—Kedah Enactment No. 56 (Land), s.28—Unlawful occupier dispossessed by trespasser—Whether occupier can sue in trespass for possession.

Practice—Jurisdiction—Waiver—Courts Ordinance, 1948, s.70—Attempt by parties to determine disputes in subordinate courts not be discouraged.